

April 3, 2016

Appeal
CC Docket No. 02-6

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

To Whom It May Concern:

We are filing an Appeal of an Administrator's Decision on behalf of the Mobile Elementary School District for Funding Year 2014.

Billed Entity: Mobile Elementary School District #86
Billed Entity Number (BEN): 142945
Form 471 Application Number: 944478
FRN: 2597982
Administrator's Decision on Appeal Date: February 3, 2016

Appeal Request filed by:

Nicely Done Consulting, LLC
Ernest N. Nicely, Partner
3820 W Happy Valley Road
Glendale, Arizona 85310

- **Reason for Denial of Funding Request:**
USAC denied your funding request because it was determined that the costs of the products and services in your funding request were significantly higher than the costs generally available in your marketplace for the same or similar products or services, There is no evidence that the reason for the excessive costs is due to extenuating circumstances, You have not demonstrated on appeal that USAC's determination was incorrect, Consequently, USAC denies your appeal.
- FCC rules state that, in selecting a service provider, the applicant must carefully consider all bids submitted and must select the most cost-effective service or equipment offering, with price being the primary factor, which will result in being the most cost-effective means of meeting educational needs and the technology plan goals. See 47 C.F.R. secs. 54.511(a), 54.503(c)(2)(vii), 54.504(a)(1)(xi). See also Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al., Federal-State Joint Board of Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., SLD Nos, 321479, et al, CC Docket Nos, 96-45 and 97-21, Order, 18 FCC Rcd 26407, FCC 03-313 paras, 47-55 (Dec, 8, 2003), Service providers shall not charge the entities a price above the lowest corresponding price, See 47 CF.R. sec. 54.511(b), In order to ensure that applicants are not requesting discounts for services beyond their reasonable needs, USAC denies funding request(s) for not being cost-effective. The costs of the products and services in a funding request should not be significantly higher than the costs generally available in the applicant's marketplace for the same or similar products or services. For example, equipment at prices two or three

times greater than the prices available from commercial vendors would not be cost effective, unless there were extenuating circumstances. See Ysleta Order para. 54.

Basis of Appeal:

The Mobile Elementary School District is located in a very remote rural part of the Arizona desert. Due to lack of broadband facilities and lack of competition, the District has very limited options to provide for Internet Access for the needs of students and staff; and these options are more expensive to obtain than their counterparts in urban settings due to the construction requirements in order to provide the services. We do not believe that the Cost Effective Review conducted took this factor into consideration. Neither the applicant nor the administrator has the means to determine whether the services applied for are cost effective in a non-existent marketplace.

The administrator's determination that "the costs of the products and services in your funding request were significantly higher than the costs generally available in your marketplace for the same or similar products or services" does not take into account that due to the remoteness of the applicant and the complete absence of bandwidth services, there are no products and services available to make a comparison. So the "costs generally available in your marketplace" cannot apply. There are extenuating circumstances as allowed by the Ysleta Order, as the administrator pointed out, but then the administrator did not apply the extenuating circumstances in making the funding decision.

The administrator's assertion that the applicant failed to "carefully consider all bids submitted and must select the most cost-effective service or equipment offering, with price being the primary factor" also has no foundation. Again, due to the extenuating circumstance of remote location, the "marketplace" is very limited; in fact limited to the offering of only two vendors. The offers of the two vendors was compared and evaluated on an evaluation matrix compliant with the FCC Fair and Open Bidding Rules. The evaluation is attached with this appeal.

Background:

1. **A single T1 is inadequate for the District's Needs.** Prior to the 2012 Funding Year, the District Internet Access was via a single T1 conduit (1.5 Mbs). This conduit is inadequate for the instructional and administrative needs of the District, regardless of the enrollment at the school. Contemporary instructional content is very audio and video intensive, and even for a single student requires greater bandwidth than a single T1.
2. **No additional T1 circuits are available in this remote rural location.** The District attempted to increase the Internet Conduit by conducting a Form 470 procurement process seeking quotes for a second T1 to be bonded to the existing T1. Qwest (now Century Link) proposed the two bonded T1s; however, Qwest facilities in that area were insufficient to deliver the second T1.
3. **The 50 Mbs service is a minimum service that service providers would construct.** Because of the remote rural location, it is not financially feasible to construct a wireless microwave or fiber optic Internet Access service for a revenue stream generated by less than a 50 Mbs service.

4. For the 2012 Funding Year, the District conducted a Form 470 procurement process seeking quotes for a 50 Mbs Internet Conduit. The results of this procurement are as follows:

Service Provider	Service	MRC	MRC per Mbs
Century Link*	(2) T1 – 3 Mbs	\$870.00	\$290.00
Century Link	Fiber – 50 Mbs	\$2,745.00	\$54.90
GovNet**	Wireless – 50 Mbs	\$2,250.00	\$45.00

*Quote is from 2011 FY Form 470

**Quote stipulated “May require one time construction charges pending final engineering. Quote does not include applicable fees and taxes.”

The Century Link proposal for fiber was awarded as the most cost effective, as the GovNet wireless proposal did not identify NRC and the wireless solution is less reliable than the fiber solution. No other Internet Access options are available to the District.

Corrective Measure:

The Mobile Elementary School District is respectfully requesting that the FCC reverse the administrator’s decision to deny this funding request, and direct the administrator to approve the funding request for \$26,352.00 as requested on the Form 471 Application #944478 FRN 2597982.

Supporting Documentation:

- ◆ Century Link Quote - T1 3 Mbs
- ◆ Century Link Quote - Fiber 50 Mbs
- ◆ GovNet Quote - Wireless 50 Mbs
- ◆ Internet Access Evaluation Matrix_2012
- ◆ Letter of Agency – Nicely Done Consulting

Additional Supporting Statement:

The FCC Report and Order Modernizing the E-Rate Program for Schools and Libraries embraces the need to improve and expand the availability of high speed bandwidth for all of our nation's schools and libraries, not just those in metro-urban marketplaces where the costs for bandwidth are lower and competition more prevalent. To quote the FCC Report and Order "... the E-rate program must evolve to focus on providing support for the high-speed broadband that schools need to take advantage of bandwidth-intensive digital learning technologies ... " Further, "Access to high-speed broadband is crucial to improving educational experiences and expanding opportunities for all of our nation's students, teachers, parents and communities."

If the administrator's decision is allowed to stand, the students, teachers, and parents of this small rural community will be denied the level of access to digital learning technologies available to urban students and teachers. Without E-Rate support, Mobile Elementary School District will not be able to afford the cost of access to the Internet, other than at a very minimum low speed level of bandwidth. Without access to high speed Internet access, the students attending the Mobile Elementary School District will be disadvantaged in competition with their peers for higher education. This is contrary to the spirit of the FCC Modernization Order.

Thank you,



Ernest N. Nicely
Partner
Nicely Done Consulting, LLC

EXECUTIVE SUMMARY

Based on a thorough assessment of your FCC form 470, we would like to present the following recommendations :

- Internet - We are proposing that you choose Qwest IQ Bundle with 1.5Mbps, 3Mbps, 6Mbps and 10.5Mbps at the rates below

SOLUTIONS SUMMARY

Internet – 36 month contract

SOLUTION	MRC	NRC
IQ Data Bundle – 1.5 Mbps – with Cisco	\$495.00	WAIVED
IQ Data Bundle – 3 Mbps – with Cisco	\$870.00	WAIVED
IQ Data Bundle – 6 Mbps – with Cisco	\$1840.00	WAIVED
IQ Data Bundle – 10.5 Mbps – with Cisco	\$3045.00	WAIVED

*Higher Speeds Available

IN CLOSING:

We believe you will find our proposal meets your district's needs, but Qwest's comprehensive portfolio of communications solutions can be custom tailored to fit your specific requirements. We have a team of dedicated individuals who have vast experience working with school districts and can assist you with any questions or additional requirements you may have. Please feel free to contact:

Peggy Rinegar
Global Account Manager
Qwest Government and Education Solutions
602.512.2532
Peggy.Rinegar@qwest.com

Joe Walden
Global Account Manager
Qwest Government and Education Solutions
602.512.2519
Joe.Walden@qwest.com



Mobile Elementary School District

Pricing Quote Detail

Product Name CenturyLink IQ Networking

Location: Mobile Elementary School District

42798 S. 99th Ave.

Date: Maricopa, AZ 85239

NPA/NXX: February 6th, 2012

Billing Number	Product	Description	Qty	MBPS	60 Month Contract Total	One - Time Installation
	CenturyLink IQ Networking	Dedicated Internet Access	1	50	1,500.00	
		Local Loop	1	50	1,245.00	0.00
		Totals:			\$2,745.00	\$0.00
	CenturyLink IQ Networking	Dedicated Internet Access	1	60	1,716.00	
		Local Loop	1	60	1,340.00	0.00
		Totals:			\$3,056.00	\$0.00
	CenturyLink IQ Networking	Dedicated Internet Access	1	70	2,002.00	
		Local Loop	1	70	1,440.00	0.00
		Totals:			\$3,442.00	\$0.00
	CenturyLink IQ Networking	Dedicated Internet Access	1	80	2,288.00	
		Local Loop	1	80	1,515.00	0.00
		Totals:			\$3,803.00	\$0.00
	CenturyLink IQ Networking	Dedicated Internet Access	1	90	2,515.00	
		Local Loop	1	90	1,615.00	0.00
		Totals:			\$4,130.00	\$0.00
	CenturyLink IQ Networking	Dedicated Internet Access	1	100	2,795.00	
		Local Loop	1	100	1,710.00	0.00
		Totals:			\$4,505.00	\$0.00

Non recurring charges waived with term agreements and 12 months of minimum service

CenturyLink does not offer increments of 50Mbps, only 100Mbps

Rates based on Arizona Carrier Services Contract ADSP011-000402

to verify eligibility, please visit http://spo.az.gov/Cooperative_Procurement/SPC/default.asp

GovNET, Inc.

7835 E. McClain Drive, Scottsdale, AZ 85260

Arizona State Contract: ADSP010-000399
 Corresponding Form 470# 119850000824906

SPIN: 143033848

To

Mobile Elementary School District
 42798 S. 99th Avenue
 Mobile, AZ 85239

Phone



BROADBANDUSA
 CONNECTING AMERICA'S COMMUNITIES

QUOTE #	DATE	PAYMENT TERMS	SALESPERSON		
AAAQ1003	Feb 3, 2012		MELISSAD		
DESCRIPTION	QTY	UNIT PRICE	MONTHLY PRICE	ANNUAL PRICE	
Internet Bandwidth (Per MB)	50	\$45.00	\$2,250.00	\$27,000.00	
Internet Bandwidth (Per MB)	60	\$45.00	\$2,700.00	\$32,400.00	
Internet Bandwidth (Per MB)	70	\$45.00	\$3,150.00	\$37,800.00	
Internet Bandwidth (Per MB)	80	\$45.00	\$3,600.00	\$43,200.00	
Internet Bandwidth (Per MB)	90	\$45.00	\$4,050.00	\$48,600.00	
Internet Bandwidth (Per MB)	100	\$45.00	\$4,500.00	\$54,000.00	

May require one time construction charges pending final engineering. Quote does not include applicable fees and taxes.

For Service: Internet Access Service 50 mbps
Date: March 13, 2012

Erate Evaluation Matrix

Total Cost of Eligible Services

Evaluation Criteria		Weight	CenturyLink	Proficient Telecom	Gov Net	Vendor D	Vendor E
			\$	NR - Non-Responsive	\$	Enter Dollars	Enter Dollars
Cost of ELIGIBLE goods and services		30	25	0	30	0	0
Other cost factors (including price of changing providers, price for breaking contract, etc)		25	25	0	20		
Ability of the vendor to provide the service		25	25	0	10		
Prior experience of the vendor with the District		20	20	0	10		
Total		100	95	0	70	0	0



This matrix is intended for the use of Nicely Done Consulting clients for the purpose of evaluating quotes and proposals received under the E-rate process. Nicely Done Consulting, its principals or employees, do not participate in the evaluation process, including but not limited to the calculation and scoring of quotes or determination of award. Criteria, scoring and final vendor selection are determined solely by the intended client.

Vendor F	Vendor G	Vendor H
Enter Dollars	Enter Dollars	Enter Dollars
0	0	0
0	0	0



Mobile Elementary School District No 86

"Partnership in Learning for ALL"

42798 South 99th Ave * Maricopa AZ 85139 * Phone 520-568-2280 * Fax 520-568-9361

June 4, 2013

Nicely Done Consulting

3820 W Happy Valley Road

Suite 141, #497

Glendale, AZ 85310

Re: Letter of Agency for Funding Year 2014-2015

This is to confirm our participation with **Nicely Done Consulting** for the procurement of all Internet Services, Telecommunications Services, Internal Connections, Basic Maintenance of Internal Connections, and any eligible E-rate Services as defined by the approved Eligible Services List. I hereby authorize **Nicely Done Consulting** to conduct procurement activities compliant with the FCC Fair and Open Bidding Rules, and submit FCC Form 470, FCC Form 471, and other E-rate forms/responses/appeals to the Schools and Libraries Division of the Universal Service Administrative Company on behalf of the **Mobile Elementary School District**.

I understand that, in submitting these forms on our behalf, you are making certifications for **Mobile Elementary School District**. By signing this Letter of Agency, I make the following certifications:

- (a) I certify that schools in our district are all schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. §§ 7801(18) and (38), that do not operate as for-profit businesses and do not have endowments exceeding \$50 million.
- (b) I certify that our school district has secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that to the extent that the Billed Entity is passing through the non-discounted charges for the services requested under this Letter of Agency, that the entities I represent have secured access to all of the resources to pay the non-discounted charges for eligible services from funds to which access has been secured in the current funding year.
- (c) I certify that our school/school district is covered by a technology plan(s) that is/are written, that covers all 12 months of the funding year, and that has been or will be approved by a state or other authorized body, or an SLD-certified technology plan approver, prior to the commencement of service. The plan(s) is written at the following level(s):
 - ☒ An individual technology plan for using the services requested in this application; and/or
 - ☐ Higher-level technology plan(s) for using the services requested in this application; or
 - ☐ No technology plan needed; applying for Priority 1 Services, as defined by the approved Eligible Services List.
- (d) I certify that the services the school, library or district purchases at discounts provided by 47 U.S.C. § 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the rules of the Federal Communications Commission (Commission or FCC) at 47 C.F.R. § 54.500(et seq.).



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- (e) I certify that our school district has complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.
- (f) I acknowledge that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.
- (g) I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts, and that if audited, I will make such records available to the Administrator. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.
- (h) I certify that I am authorized to order telecommunications and other supported services for the eligible entity(ies) covered by this Letter of Agency. I certify that I am authorized to make this request on behalf of the eligible entity(ies) covered by this Letter of Agency, that I have examined this Letter, that all of the information on this Letter is true and correct to the best of my knowledge, that the entities that will be receiving discounted services under this Letter pursuant to this application have complied with the terms, conditions and purposes of the program, that no kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.
- (i) I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or any of the entities, or any person associated in any way with my entity and/or the entities, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.
- (j) I certify, on behalf of the entities covered by this Letter of Agency, that any funding requests for internal connections services, except basic maintenance services, applied for in the resulting FCC Form 471 application are not in violation of the Commission requirement that eligible entities are not eligible for such support more than twice every five funding years beginning with Funding Year 2005 as required by the Commission's rules at 47 C.F.R. § 54.506(c).
- (k) I certify that, to the best of my knowledge, the non-discount portion of the costs for eligible services will not be paid by the service provider. I acknowledge that the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of some or all of the cost of the supported services.
- (l) I certify that I am authorized to sign this Letter of Agency and, to the best of my knowledge, information, and belief, all information provided to Nicely Done Consulting for E-rate submission is true.

Name of



Mobile Elementary School District No 86

"Partnership in Learning for ALL"

42798 South 99th Ave * Maricopa AZ 85139 * Phone 520-568-2280 * Fax 520-568-9361

Entity Mobile Elementary School District

Signature Kit Wood

Date 10/28/13

Name: Kit Wood

Title: Superintendent